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Law

CIVIL LITIGATION

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1. The Air Force faces many lawsuits and legal proceedings (civil litigation), which challenge its actions and policies. Because many of these cases can hinder the Air Force's mission, it must defend its interests by winning or settling them based on the merits of each case. This policy makes sure the Air Force's involvement in civil litigation is appropriate and ethical, while properly protecting the Government's interests.
2. No Air Force member or employee will appear as an attorney or counsel for the Air Force unless authorized by The Judge Advocate General (TJAG) or the Air Force General Counsel (SAF/GC). This prohibition includes appearances on behalf of individuals or before any civil court, tribunal, administrative body, or Government agency.
3. Official information will be released for use in Federal and State courts, and other governmental proceedings unless the information is classified or otherwise protected from public disclosure.
4. The Air Force fully cooperates with attempts to properly serve process.
5. The Air Force will remain strictly impartial in private litigation in which the United States does not have an interest.
6. Air Force personnel may appear as witnesses in civil litigation when requested by attorneys in the Department of Justice or in Air Force litigation divisions.
7. Except on behalf of the United States, Air Force personnel will not provide opinion or expert testimony concerning official Air Force or Department of Defense (DoD) information, subjects, or activities. TJAG or a designee may grant an exception to this policy as long as testimony does not harm the United States' interests.
8. The Air Force will give military members the chance to serve on a State or local jury as often as their military duties permit. Under Federal law (Title 10, United States Code, Section 982), Air Force

members are exempt from jury duty when it unreasonably interferes with military duties or decreases readiness in a unit, command, or activity.

9. The Air Force will have experts in all aspects of health law. It will train medical law consultants and maintain high standards of knowledge and experience in medicolegal and Quality Assurance issues. This expertise will support the Air Force Surgeon General and the Air Force's legal interests.

10. Consistent with law and mission requirements, the Air Force will protect its interests in patents, trademarks, copyrights, and related matters.

11. The following responsibilities and authorities are established:

11.1. With the SAF/GC, the TJAG initiates, supervises, and coordinates all actions necessary to protect the Air Force's interests in litigation. The TJAG carries out these actions through the Air Force Legal Services Agency (AFLSA) and the International and Operations Law Division (HQ USAF/JAI). This responsibility includes all legal disputes and other legal matters that involve Air Force activities in the United States and in foreign countries.

11.2. Staff judge advocates, or the litigation division responsible for the subject matter, determine whether official information may be released in litigation.

11.3. Commands subordinate to HQ US Air Force do not start or take any action on civil litigation unless TJAG or one of the litigation divisions identified below authorizes their involvement.

11.3.1. The General Litigation Division (AFLSA/JACL) handles litigation in domestic courts involving military and civilian personnel, taxes, and utility rates, as well as the Privacy and Freedom of Information Acts. They litigate constitutional and personal torts that do not arise under the Federal Tort Claims Act or admiralty. They also cover administrative cases involving unfair labor practices, administrative class actions under the Equal Employment Opportunity (EEO) Act and, when possible, individual EEO and other labor cases.

11.3.2. The Tort Claims and Litigation Division (AFLSA/JACT) deals with litigation under the Federal Tort Claims Act, and with admiralty cases. They also manage the Air Force Medical Law Program.

11.3.3. The Contract Litigation Division (AFLSA/JACN) handles actions filed in court and relating to contracts, including contractor bankruptcies. The Air Force Materiel Command Law Center Directorate of Contract Appeals (AFMCLC/JAB) litigates cases before the Armed Services Board of Contract Appeals (ASBCA). However, SAF/GC handles some significant court and ASBCA cases and litigates matters before the General Services Board of Contract Appeals and the General Accounting Office.

11.3.4. The Environmental Litigation Division (AFLSA/JACE) covers litigation concerning the environment and land use.

11.3.5. The Patents Division (AFLSA/JACP) handles litigation on patents, copyrights, trademarks, and related matters.

11.3.6. HQ USAF/JAI handles foreign civil cases involving the Air Force, its instrumentalities, and its officials.

11.4. SAF/GC, except for litigation, protects the Air Force's interests in patents, trademarks, copyrights, and related matters. They also manage the Air Force patent licensing program.

11.5. The Chief, or Associate Chief, General Litigation Division (AFLSA/JACL) accepts service of process for the Department of the Air Force. Further, the Chief of AFLSA/JACL may accept a subpoena issued to the Secretary of the Air Force.

12. This policy interfaces with various legal publications. Related policies are in AFDPD 51-5, *Military Legal Affairs*. Related instructions are in AFI 51-301, *Civil Litigation* (formerly AFRs 110-5, 110-10, and 110-24); AFI 51-302, *Medical Law Program* (formerly AFR 110-30); AFI 51-303, *Air Force Patents Program* (formerly AFRs 110-8 and 110-33); and AFI 51-501, *Tort Claims* (formerly AFR 112-1).

13. See **ATTACHMENT 1** for measures of compliance to this policy.

DAVID C. MOREHOUSE, Maj General, USAF
The Judge Advocate General

Attachment 1

MEASURING AND DISPLAYING COMPLIANCE WITH POLICY

A1.1. Compliance will be measured by tracking the percentage of cases in litigation won by the Air Force **Figure A1.1.** If a case is settled short of trial, such a case is won when a settlement is entered on terms favorable to the Air Force. Each litigating division within HQ US Air Force and AFLSA will record the number of cases won and lost on a quarterly basis. Cases will be reported to the Director of Civil Law and Litigation (AFLSA/JAC) for the quarter in which they are closed.

Figure A1.1. Sample Metric of Civil Litigation 1991 Quarterly Win/Loss Ratio.

